

**CITY OF MORGAN HILL
REGULAR CITY COUNCIL MEETING
MINUTES – JANUARY 18, 2006**

CALL TO ORDER

Mayor Kennedy called the special meeting to order at 7:00 p.m.

ROLL CALL ATTENDANCE

Present: Council Members Carr, Grzan, Sellers, Tate and Mayor Kennedy

DECLARATION OF POSTING OF AGENDA

The meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Mayor Kennedy presented Mona Helmhold, Red Cross Donor Recruitment Representative, with a proclamation for National Volunteer Blood Donor Month.

Ms. Helmhold indicated that organizations in Morgan Hill hosted 11 blood drives in 2005; donating 320 pints of blood. These 320 units of blood saved approximately 1,000 lives. She announced that the next blood drive will be held on Monday, February 6 from 1:30 p.m. – 6:30 p.m. at the Church of the Rock. It is her hope that 500 units of blood can be collected in Morgan Hill in 2006.

CITY COUNCIL REPORT

Mayor Kennedy reported the following:

Coyote Valley

He has been heading up the Stakeholders Committee on Coyote Valley, presenting the City's positions jointly with the Morgan Hill Unified School District (MHUSD) and Gavilan College to the City of San Jose. The Committee has met with San Jose's Mayor Ron Gonzales, Council Member Forrest Williams and their staff on numerous occasions; as well as attending the task force committee meetings and presenting perspectives for South County residents.

Mayor Kennedy indicated that Steve Kinsella, President of Gavilan College; City Manager Tewes; Alan Nishino, Superintendent of the MHUSD; and Mike Hickey, president of the MHUSD Board of Trustees; and he met recently with San Jose Mayor Gonzales and Council Member Williams. He indicated that the new representative from the City of San Jose, Council Member Nancy Pyle, who is replacing Mayor Gonzales on the Task Force, sent her chief of staff to attend the meeting as she was unable to attend the meeting. He stated that Council Member Pyle will be invited to meet with Council Member Sellers and he in Morgan Hill to further convey areas of concern and interest that Morgan Hill has with VTA as well

as Coyote Valley. It was his belief that progress has been made with respect to Coyote Valley. He said that San Jose has agreed to allow Morgan Hill's Planning Staff and the City's traffic consultants to meet with their traffic consultants as they prepare the traffic study portion of the environmental impact report. He said that this is an area of vital importance to Morgan Hill and South County. He indicated that Dr. Kinsella presented Gavilan College's issues as did Superintendent Alan Oshino and School Board President Hickey.

Caltrain Service/Greenbelt

He indicated that there has been discussion about increased Caltrain service. One area with shared common interest is related to reverse commute. He stated that Coyote Valley will need a Caltrain station. In order to make this work, consistent with San Jose's belief that 80% of the residents will commute south to Coyote Valley, there is a shared common goal of ensuring that reverse commute Caltrain service is provided. He indicated that there were other issues discussed such as housing. He said that the City of San Jose is proposing to develop Coyote Valley over a phased plan. He stated that triggers are still in place; requiring jobs to be built first; even though there is a lot of discussion taking place about changing the triggers. There was also discussion about the greenbelt. He said that the Coyote Valley greenbelt is considered to be part of Morgan Hill's greenbelt and that the greenbelt is to be shared between the two cities. He said that the urban limit line established a greenbelt around the entire city. He said that there will be general plan revisions to incorporate Morgan Hill's greenbelt. He stated that it is important that the City of San Jose enforces the planned Coyote Valley Greenbelt to be consistent with Morgan Hill's greenbelt.

Santa Clara Valley Transportation Authority (VTA)

He serves as the interim member of the Board of Directors of the Santa Clara Valley Transportation Authority (VTA). With respect to VTA activities, he indicated that a series of meetings have been held. The most recent meeting held was the VTA Policy Advisory Committee to which he attended. He indicated that Council Member Sellers is the City's representative to the Committee. However, he was unable to attend the meeting due to a schedule conflict. He stated that the City Council will be holding its goal setting retreat this Friday and Saturday; indicating that the Council will be receiving a presentation from VTA staff on the transportation and transit capital improvement program that includes a proposed quarter cent sales tax. He said that the recent information from VTA and the general manager is that the most recent sales tax studies indicate that there are sufficient funds projected to come in to cover all proposed projects. Even projects placed out into the future were moved up into the current completion plan. He expressed concern whether these numbers were valid. However, the Council will be receiving a presentation from VTA staff and will have this discussion. Next week, the MGM Group 4 of the VTA which consists of Morgan Hill, Gilroy and Milpitas will hold a meeting in Morgan Hill to talk about a joint position for the VTA Board of Director's meeting to be held on February 2, 2006 when the VTA Board will take action on the proposed transit capital improvement program. He said that the Council will have the opportunity to discuss the quarter cent sales tax at the January 25, 2006 Council meeting and that the Council's decision will be forwarded to the VTA Board.

CITY COUNCIL SUBCOMMITTEE REPORTS

Council Member Sellers indicated that he is chair to the Community & Economic Development Committee. He reported that last Friday, a special workshop was held to discuss a downtown ballot measure. Discussed was whether or not the City should consider placing a ballot measure on the June

2006 ballot that would focus on downtown housing and whether or not housing in the downtown should be exempt from Measure C. He said that there was fruitful discussion and that the staff report brought to light the fact that such a ballot measure may trigger an environmental review process that will make it difficult, if not impossible, to look at a June 2006 ballot measure. Being discussed is whether such a ballot measure should proceed in November 2006. He reported to the Council that it appears that at this point, for a variety of reasons, not the least is the timing and the need to undertake additional environmental review; the Committee has determined that it will not recommend the City proceed with a ballot measure in June 2006.

Council Member Carr stated that the Public Safety & Community Services Committee held a special meeting last week and held its regular meeting this evening to discuss some of the larger topics that will be agendaized for the Council's retreat; including the outdoor sports complex, the indoor recreation center and a potential partnership with the YMCA, and other items the Committee expects will be discussed at the retreat.

CITY MANAGER REPORT

City Manager Tewes reported that the City is engaging in a unique and extensive new process of civic engagement called the "Community Conversation." He said that this process will engage citizens and business people in the community to talk with each other about the kind of city services that should be pursued, at what levels, and how these services are to be paid for. He said the City is receiving good responses from individuals and groups who are scheduling Community Conversations. He said that there are still plenty of opportunities and that everyone will be invited to participate. No one wishing to participate will be turned away. He indicated that in the next week or two, citizens will receive a direct mail piece; the first of a series of mailers to every household in the community. The mailers will explain the process; identify what individuals have talked about, thus far, and how individuals can engage in the Community Conversations. If individuals are interested in the Community Conversation, he recommended that they contact City Hall

City Manager Tewes indicated that in the next couple of weeks, the Council will be considering adopting its goals for 2006. He stated that on Wednesday, February 8, 2006 at 7:00 p.m., Mayor Kennedy will be providing the annual State of the City presentation based on the goals. He announced the State of the City address will be held at the Community & Cultural Center and that everyone in the community is invited.

CITY ATTORNEY REPORT

Interim City Attorney Siegel stated that he did not have a report to present this evening.

PUBLIC COMMENT

Mayor Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Dan Ehrler indicated that the Council should have received communication from the Morgan Hill Chamber of Commerce Board of Directors addressing two specific issues: 1) the outdoor sports complex; and 2) downtown development. He informed the Council that the Board of Directors received

input from three committees; in particular the Visitor Advisory Committee relative to the outdoor sports complex; the soccer fields being a major focus. The Economic Development Attraction and Retention Committee also reviewed this issue. He said that both committees went through a process that resulted on the recommendation of approval of the information sent to the Council. He said that the information has been forwarded to time it with the Council's upcoming goal setting session to be held this weekend in the hope that the Board of Director's recommendations will be taken into consideration and used as part of the Council's discussion. He wanted to make clear that relative to the second item, downtown development, discussions were in conjunction with the Downtown Association. He stated that the Chamber of Commerce realizes that there are many challenges. He read from a paragraph of the recommendation forwarded to the Council relative to the series of challenges inherent in the recommended policies that need to be addressed, explored and solved. However, the Board believes that what may look as impossible now, may be a possible down the road. The Board looks forward toward engaging in a continuing conversation on the issues. He noted that there is a timing issue with the soccer fields associated with an outdoors sports complex and working toward retaining CYSA in Morgan Hill.

No further comments were offered.

CONSENT CALENDAR:

Action: *On a motion by Council Member Tate and seconded by Council Member Carr, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-11 as follows:*

1. **INDOOR RECREATION CENTER PROJECT – DECEMBER CONSTRUCTION PROGRESS REPORT**

Action: **Information** Only.

2. **APPROVAL OF PURCHASE ORDERS TO U.S. FILTER FOR PERCHLORATE REMOVAL SYSTEMS OPERATION AT NORDSTROM AND TENNANT WELLS THROUGH JUNE 30, 2006**

Action: **Authorized** Issuance of Purchase Orders to U.S. Filter in the Amount of \$123,300.

3. **LAND LEASE FOR GO KIDS AT GALVAN PARK**

Action: 1) **Approved** Land Lease Agreement; and 2) **Authorized** the City Manager to Execute a Land Lease of a Portion of Galvan Park to Go Kids, a Non-Profit Corporation for the Fee of \$1.00 Per Year.

4. **AMENDMENT TO CONTRACT PROVIDING PUBLIC WORKS INSPECTIONS ON AN AS-NEEDED BASIS**

Action: 1) **Approved** Amendment to the Contract with Testing Engineers, Inc. (TEI) to Increase the Contract Amount by \$50,000; and 2) **Authorized** the City Manager to Execute the Contract Amendment, Subject to Review and Approval by the City Attorney.

5. **ACCEPTANCE OF MONTEREY ROAD BIKE DETECTION INSTALLATION PROJECT**

Action: 1) Accepted as Complete the Monterey Bike Detection Installation Project in the Final Amount of \$40,903.50; and 2) Directed the City Clerk to File a Notice of Completion with the County Recorder's Office.

6. **DOWNTOWN TRAFFIC CALMING – SIX MONTH REVIEW AFTER JUNE 2005 INITIAL INSTALLATION**

Action: Information Only at This Time.

7. **CONSULTANT AGREEMENT FOR DEVELOPMENT PROCESSING SERVICES CUSTOMER SERVICE STUDY**

Action: Authorized the City Manager to Execute a Contract with Colgan Consulting Corporation for the Purpose of Conducting a Customer Service Study of the City of Morgan Hill's Development Processing Services; Subject to Review and Approval by the City Attorney.

8. **DELTA DENTAL BENEFIT PLAN**

Action: Authorized the City Manager to Execute Amendments to the Dental Benefit Plan.

9. **SUPPLEMENTAL LAW ENFORCEMENT SERVICES FUND**

Action: 1) Approved the Fiscal Year 2005-2006 Spending Plan for the Supplemental Law Enforcement Services Fund (S.L.E.S.F.); and 2) Increased the Fiscal Year 2005-2006 Police Budget within the General Fund by \$50,000 for the Cost of the Multi-Service Officer (MSO) Prisoner Transport Vehicle.

10. **PURCHASE OF POLICE MOTORCYCLES**

Action: 1) Authorized the Purchase of Two (2) Motorcycles from the Huntington Beach Honda Dealership Through Reliance Upon the Competitive Bid Process for a Total Cost of \$29,104.38; and 2) Declared the Two (2) Vehicles Being Replaced as Surplus and Authorized the Sale of these Vehicles at Auction.

11. **ADOPT ORDINANCE NO. 1748, NEW SERIES**

Action: Waived the Reading, and Adopted Ordinance No. 1748, New Series, and Declared That Said Title, Which Appears on the Public Agenda, Shall be Determined to Have Been Read by Title and Further Reading Waived; Title as Follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE CITY COUNCIL OF THE CITY OF MORGAN HILL AND THE BOARD OF ADMINISTRATION OF THE CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM TO PROVIDE 2.5% AT 55 RETIREMENT BENEFIT FOR MISCELLANEOUS EMPLOYEES.**

OTHER BUSINESS:

12. **APPOINTMENT OF CITY ATTORNEY**

Mayor Kennedy indicated that this item pertains to the appointment of Janet Kern as the city attorney for the City of Morgan Hill. He stated that the Council has gone through a lengthy review/interview process

and that they are pleased to announce that an offer has been made to Janet Kern and that she has accepted the Council's offer in the position.

Mayor Kennedy opened the floor to public comment. No comments were offered.

Action: *Council Member Tate made a motion, seconded by Council Member Sellers, to Appoint Janet C. Kern as City Attorney for the City of Morgan Hill.*

Action: *Council Member Tate made a motion, seconded by Council Member Sellers, to Approve Employment Agreement.*

Action: *Council Member Tate made a motion, seconded by Council Member Sellers, to Authorize the Mayor to Execute Employment Agreement on Behalf of the City.*

Mayor Pro Tempore Grzan welcomed Janet Kern to the community/City of Morgan Hill, and thanked her for accepting the position. He stated there are a number of challenges the City will face in the future and that as city attorney; she will be challenged with a number of issues. He indicated that she would receive a tremendous amount of support from Council and staff. He indicated that this is a wonderful place to work/live and that he is looking for a number of accomplishments as the City moves forward.

Council Member Carr indicated that the Council recently went through a very involved recruitment process in reviewing resumes, conducting personal interviews, conducting second interviews, and checking references. He said that a lot of hard work went into this effort that resulted in a good conclusion. He said that Ms. Kern quickly rose to the top in the process and made the selection one that everyone is proud of and eager to move forward with. He was pleased to have Ms. Kern on board and be a part of the City team. He said that the timing is perfect as the Council is setting its goals and embarking on where it wants to take the City. He was pleased to be able to move forward with the contract this evening.

Council Member Sellers said that the Council determined early on in the process that it was going to find someone who they considered to be the best candidate. If this occurred in the initial phase, that would be great; and had it not, the Council would have continued its search until it was satisfied with a city attorney candidate. He concurred with the comments expressed by the other Council Members in that the Council is excited about having Ms. Kern on board as the city attorney. He indicated that the City faced a variety of unique challenges over the past few years and that it is his hope that the significant legal issues would be minimized in the future. He looks forward toward working with the new city attorney over the next few months and years.

Mayor Pro Tempore Grzan thanked Interim City Attorney Siegel for the tremendous support he has provided the City over the last couple of years and for his guidance.

Mayor Kennedy announced that Ms. Kern's official start date as the City Attorney will be February 20, 2006 where a formal reception will be held. This will provide time for the public to meet Ms. Kern. He concurred that Ms. Kern rose to the top, over all candidates; indicating that there were excellent and well qualified applicants for the city attorney position.

Vote: *The three motions carried unanimously (5-0).*

Ms. Kern indicated that she is honored with the appointment and that she is looking forward toward working with all Council members. She has heard clearly about the issues that are challenging the City at this time and that she is ready to work on these challenges.

13. DEPOT STREET RECONSTRUCTION PROJECT ON-STREET PARKING

Assistant Public Works Director Bjarke presented the staff report. He informed the Council that staff has eliminated all contentious issues with respect to parking and the affected tenants/property owners along Depot Street, including that of the Academy of Martial Arts. Staff recommends Council adoption of the proposed parking plan which includes parking on one side of Depot Street, along the east side, from Main Avenue to Third Street and that from Third Street to Fifth Street, parking would move over to the west side. He indicated that bike lanes would be provided on both sides of the streets. With respect to the resolution of the Academy of Martial Arts, he indicated that it is proposed to widen the curb and provide a striped temporary drop off lane. Also, being proposed is the installation of a four-way stop sign at the intersection of Third and Depot Streets in order to slow traffic down and make crossing the street easier.

Council Member Tate noted that the east side of Depot Street, between Fifth Street and Dunne Avenue, is not a part of this project and would be conspicuous when the work is completed. He inquired whether there were any plans to install curb and gutter in this area.

Mr. Bjarke indicated that there are no plans to install curb and gutter along this area. He said that the reason the project stopped at Fifth Street is because the General Plan identifies Dunne Avenue as eventually becoming grade separated over and above the railroad tracks. Depot Street is called out to be cul de sac at or near Fifth Street. He indicated that staff is considering an entry statement coming from the south, but that staff has not begun to design the entry statement.

Council Member Sellers noted that construction is to commence in July 2006 with an anticipated completion date in December 2006. He indicated that parades are held in July and December, and that both parades use Depot Avenue as a staging area. In the middle of all this, the Taste of Morgan Hill will take place. He inquired whether these issues have been addressed by parade proponents and the Chamber of Commerce with staff.

Mr. Bjarke said that it is not proposed to commence construction until after the Fourth of July parade. The contract is proposed to be awarded in June 2006 and construction commencing later in July, after the parade is over. He informed the Council that he has been working with Sunday Minnich regarding the Mushroom Mardi Gras event as a utility undergrounding project will take place in May. Staff has been in touch with the Taste of Morgan Hill group as well as coordinating with this group to minimize construction, including minimizing impacts to the Farmer's Market. It is proposed to allow as much parking as possible.

Mayor Kennedy opened the floor to public comment.

Dan Ehrler stated that he met with staff about the Taste of Morgan Hill and possible impacts. He agreed that there will be some challenges associated with the construction to take place. He stated that the Chamber of Commerce will be working with staff to figure out how staging can occur and get the vendors in. He expressed his appreciation to Mr. Bjarke, Public Works Director Ashcraft and other staff members in meeting with the owners of the Martial Arts business. Staff genuinely listened to concerns and worked toward a solution that appears to be beneficial to everyone.

Charles Weston stated his appreciation to Public Works staff (Mr. Bjarke, Yat Cho, and Julie Behzad) for making sure that his concerns were addressed. He said that it is a little disturbing that there will only be parking on one side of the street as it is felt that Depot can provide parking on both sides of the street. He requested that consideration be given to narrowing the street. He indicated that he gave Mr. Bjarke a proposal that would provide parking between the train depot and the Granary. He noted that the property is not being used and is a weed patch at this time. He felt that there may be up to 10 extra parking spaces provided that could make up for the lost parking along Depot Street. He understands that this would add costs, but felt this area would add to the lost parking.

Dan Craig, representing the Morgan Hill Downtown Association, commended staff for their efforts as they went the extra mile to work on the tough issues associated with the project. He informed the Council that the Association Board established a position that they would like to see the parking designed along the east side of Depot Street as they would like the least number of parking spaces lost. He was pleased to know that some of the other private property owners' issues were rectified during the process and that staff should be commended for their efforts.

Leslie Miles informed the Council that she and Gary Walton spent some time on Monday talking and that Mr. Walton shared information about other cities who have conducted street narrowing schemes that allowed parking on both sides of a street. It has been found that there are a number of individuals who take Depot as a short cut. In the long run, when it becomes a dead end street and a stop sign is installed, it will deter individuals from using Depot as a short cut. She requested the opportunity to review street narrowing schemes with staff. She wants to make sure that the consultants are looking at the context of the Granary project to ensure their design has a relationship to this project; being Morgan Hill specific.

No further comments were offered.

Mr. Bjarke said that the proposal, as mentioned by Mr. Weston, appears to be viable for creating up to 10 parking spaces. The design would include connecting the parking lot constructed at the Granary project with the Depot project. He indicated that the vacant lot is owned by the City and that this is something that staff is looking into. He informed the Council that he has reviewed the information Mr. Walton shared with Ms. Miles. He stated that the information depicts narrow street width designation where you have parking on both sides of the street as well as cars traveling both ways. He said that staff would have to review the bike lanes; noting that the funding source for this project is for transportation for livable communities. The intention of this project is to enhance pedestrian and bicycle traffic through the area. However, staff would be willing to take a closer look at the street width proposal.

Council Member Sellers stated that the Community & Economic Development Committee reviewed this project. He said that when this issue first came before the Committee, the Committee was anxious about

the project. The Committee felt it was appropriate to have a public airing of the issues. At the time, the Committee did not know that staff would employ creativity in coming up with a solution to resolving what he believed would be an unsolvable problem. He thanked Committee Member Carr for placing this item on their agenda last week; and to staff, the Downtown Association and downtown businesses who worked on a collaborative effort/successful resolution.

Council Member Tate noted that Mr. Craig inquired why the City flipped the parking over to the west side. It was his belief that the reason for shifting parking to the west side is due to the fact that additional parking would be achieved as there would be less curb cuts.

Mr. Bjarke indicated that the same number of parking spaces would be achieved on either side of the street for this particular stretch of the road. This would not be the case as you go further to the north. The reason for shifting parking to the west side of the street is because of the proposed development of the area (e.g., mixed use) where it made sense to have parking provided along the west side of the street.

Action: *On a motion by Council Member Sellers and seconded by Council Member Tate, the City Council unanimously (5-0) **Approved** Staff Recommended On-Street Parking Plan for the Depot Street Reconstruction Project.*

PUBLIC HEARINGS:

14. WATER-EFFICIENT LANDSCAPING ORDINANCE – Ordinance No. 1751, New Series

Programs Manager Eulo presented the staff report, indicated that the City does not currently have a good water conservation landscape ordinance in place, and that the ordinance before the Council is proposed to change this. He informed the Council that the City is currently addressing the issue of landscape water efficiency from three angles: 1) The City is setting an example through the demonstration water conservation garden at City Hall. 2) The program the Council previously authorized, in partnership with the Water District, offers rebates to individuals who remove lawn and replace it with water conserving landscaping. He said that staff is waiting for the latest promotional materials on this program and that once received, the program will be publicized. The rebate to Morgan Hill residents is up to \$2,000 to pay for the plants and materials associated with the conversion from turf to a water conserving landscape plan. Businesses would be entitled up to a \$20,000 rebate. He informed the Council that the City is the only city that is doubling the Water District's rebate program. 3) The ordinance would require future development to have water conserving landscaping. He stated that the ordinance, as proposed, is consistent with the State's model ordinance and is a hybrid from another jurisdiction's successful ordinance. He informed the Council that the proposed ordinance was reviewed by the Architectural & Site Review Board, the Utility & Environmental Committee, and developers.

Mayor Pro Tempore Grzan thanked Mr. Eulo and staff for preparing the ordinance before the Council. He felt it imperative for cities in California to look toward water conservation in order to mitigate the water needs in communities. He said that the City of Morgan Hill needs to take the initiative to show the community what the City can do, and adopt workable ordinances that provide for draught tolerant landscaping and efficient irrigation systems. He noted that California is a growing state and that this is a growing community with limited water resources. Therefore, an ordinance such as this one provides the City with an opportunity to curtail the use of water and encourages water conservation to preserve our

water sources today and for generations to come. He applauded staff for bringing this ordinance forward.

Mayor Kennedy opened the public hearing. Leslie Miles indicated that it was her belief the City had such an ordinance in place for the past 15 years. She commended/applauded the City for its effort on the water conservation ordinance. No further comments being offered, the public hearing was closed.

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the Reading in Full of the Ordinance No. 1751, New Series, Adding Chapter 18.73 (Water Conserving Landscapes) of the Municipal Code.*

Action: *On a motion by Council Member Tate and seconded by Council Member Sellers, the City Council **Introduced**, Ordinance No. 1751, New Series, by title only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL ADDING CHAPTER 18.73 (WATER CONSERVING LANDSCAPES) OF TITLE 18 (ZONING) OF THE MUNICIPAL CODE OF THE CITY OF MORGAN HILL REGARDING THE ESTABLISHMENT OF LANDSCAPE REGULATIONS PROMOTING THE EFFICIENT USE OF WATER**, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

OTHER BUSINESS: *(Continued)*

15. RETROACTIVE FEE REVISIONS FOR SOLAR PHOTOVOLTAIC ROOF SYSTEM PERMITS

Chief Building Official Ford presented the staff report, requesting Council direction regarding the issuance of refunds for solar permits. He informed the Council that the Utility & Environmental Committee reviewed this matter and is returning for Council consideration. He stated that in the past, the Building Division issued solar permits as combination building permits; consistent with most other agencies. However, after careful consideration, staff determined that these permits are approximately 90%-95% electrical only permits and 5%-10% other related structural and/or building permit fees. With careful consideration, and the approval of the City Manager, staff changed its policy and started issuing the solar permits as electrical only permits. This process commenced in December 2005. Staff believes that even with these revised fees being collected for electrical only permits, they will pay for the services the City provides in plan checking and inspections. He clarified that fees in the past were not collected incorrectly and that no one was over charged. The fees collected were in compliance with the policy in place at the time. Staff would like to know to what extent the Council wishes to refund fees. He indicated that staff is suggesting that a reasonable refund be given to commercial applications where applicants were charged a large amount for these types of services. He said that a refund for Mr. Kushner's project would amount to \$3,906.62. Should the Council decide to refund the difference of all solar permits issued in the last three years, the refund amount would equate to \$21,927.

Mayor Pro Tempore Grzan inquired how much of the \$21,927 refund calculation is for commercial and how much is for residential.

Mr. Ford informed the Council that over the past three years, the City issued only one large commercial permit and that the other permits were for evaluations that equate from \$15,000 - \$30,000; most for residential applications. He said that 90% of these solar permits are electrical in nature with 10% being structural or building in nature.

Mayor Pro Tempore Grzan inquired whether the permits issued in the past included fees for work/inspections the City never conducted. He acknowledged that technically the City did not overcharge, but did not provide all the services the City would have provided.

Interim City Attorney Siegel stated that staff is comfortable in stating that the permit fees charged were accurate and the services were provided based on how the permits were calculated during that period of time. With the additional information being provided, staff has been able to figure out a way to provide services in a more economical fashion and to reflect the reality of a push toward alternative sources of energy. He recommended the City be careful about indicating that there was something wrong or that services were not provided. To his knowledge, it is only Mr. Kushner who has lodged a complaint about these fees and that no one else who received these permits had complaints about the fees or services provided by the Building Division.

Mr. Ford informed the Council that the photovoltaic solar permits are fairly new and have only been around for three years. When these permits first started, there was a lot of staff time spent on special training for the building inspectors on photovoltaic inspections.

Mayor Kennedy inquired which fund the refunds would come from.

City Manager Tewes said that fees are paid into the Community Development Fund, an enterprise fund that takes into account the engineering and planning activities for private land development, and building inspections. This fund would require an appropriation in the amount determined by the Council and that subsequent fees would have to make up this difference as costs were incurred.

Mayor Kennedy felt that in fairness and equity, if fees are to be refunded, all fees should be refunded even though it is a significant hit of approximately \$22,000. He stated that he would support refunding all fees three years back.

Mayor Pro Tempore Grzan indicated that the Utility & Environmental Committee supports and recommends the City refund three years back. In fairness, he would agree to refund 3 years back, but would agree to refund at least a year back; covering the year that this concern was raised.

Council Member Carr stated that he understood the rationale for Mr. Kushner's protest of the solar permit fees. The Council agreed to look into the fees. He agreed to move forward with a revised reduced fee because it sets the policy the Council wants to institute; trying to institute and promote alternative energy sources into Measure C. He recommended the Council to be careful and have a good rationale for refunding years back. He expressed concern that the Council may be setting a difficult precedent. If it can be determined that other fees can be reduced for an economic development purpose or some other policy and/or rationale, the Council may be setting a direction that it would go back, analyze and provide refunds to individuals based on changes. He was not sure about the argument of fairness as it

could be carried too far as the rational for refunding fees. If the City is going to spend tax dollars to refund these fees, he needs to have a good rational for the public purpose in doing so.

Council Member Tate noted that Mr. Ford indicated that this was a new technology three years ago and that inspectors needed training. He noted that the Council has a policy in place that states it is to examine City fees every few years. As inspectors gain experience and knowledge, fees are adjusted. He shared the concern about setting a precedent for something that seems well justified for what had been charged.

Council Member Sellers noted that costs are initially higher at the beginning of new technology and that there are additional costs incurred. He noted that Mr. Kushner was the only commercial applicant for a recent photovoltaic permit. He said the Council could state that this was a commercial project and the City conducted a study. Through the study, it was found that there were fee issues. As this is the third year that these permits have been issued, it could be stated the City has absorbed most of the costs incurred with the initial start up and training. Therefore, the Council can justify changing the fees. It could be stated that the costs incurred early on were appropriate due to the work and costs involved. However, it is now appropriate to consider a fee reduction. He stated that he would support a fee reduction for commercial permits going back and refunding Mr. Kushner \$3,900. He recommended that the new fees be applied henceforward as he supports the new process.

Mayor Pro Tempore Grzan stated his support of refunding one year back. He said that an individual could argue that they applied for permits within months of the Council changing its policy. He felt the City could have looked at these fees a little closer prior to Mr. Kushner bringing this issue to the Council's attention and prior to having the City being portrayed as a municipality with one of the largest costs for these types of permits. In fairness to permits being issued prior to Mr. Kushner's permits, he recommended the City go back a year and provide refunds. He felt that the Council would serve its residents well in doing so.

Action: *Mayor Pro Tempore Grzan made a motion, seconded by Mayor Kennedy, to authorize refund payments for solar photovoltaic roof system permits; going back one year (calendar year 2005).*

Mayor Kennedy agreed that there was a learning curve on the part of staff and that legitimate fees were charged. He noted the Council recently modified its policy. He would support going back one year in providing refunds to be fair.

Council Member Tate indicated that he did not know when Mr. Kushner submitted his application. He recommended that the date Mr. Kushner submitted his permit application be the effective date to refund.

Council Member Carr felt the decision to refund needs to be tied to something that can demonstrate a public purpose for spending these resources. He felt that Council Member Tate's suggestion of identifying the date Mr. Kushner submitted his permit be the start date for refunds. He noted that the Committee was already reviewing the fees before the City was challenged on its fees. He indicated that he needs to find something to tie the rebate to. He could tie the rebate to Mr. Kushner's challenge on the fees being charged. He does not find a public purpose in making the refunds, arbitrarily going back 1-3 years.

Mayor Pro Tempore Grzan stated that he would find it difficult not to refund an individual who applied for a permit three weeks before Mr. Kushner did. He felt that the calendar year 2005 would be an appropriate earmark to refund.

Council Member Sellers agreed that refunds need to be tied to something. He said that it could be stated that the City went back to review the fees. In reviewing the fees, the City realized that there was a point in which it made sense to make the transition to revise the fees. He noted that Mr. Kushner's fees fell within this timeline. It could be stated that in the year 2005, the Council realized that the City could reduce the permit fee. He expressed concern with tying the rebate to Mr. Kushner's case because the City tied the rebate to an arbitrary demarcation point: the date Mr. Kushner requested Council reconsideration of the fees. He recommended that the refund be tied to the beginning of 2005 as this is the time the Council reviewed the process and realized that this was the year where there was a significant demarcation as the City absorbed all of the significant early costs; figuring a way to reduce the overall costs that were charged. Therefore, he would support the motion based on these two points.

Mayor Kennedy opened the floor to public comment. No comments were offered.

City Manager Tewes indicated that staff has observed that building permit numbers are issued in sequential order. Staff does not know the date of the submittal of Mr. Kushner's application. However, if the Council decides to refund from the date Mr. Kushner submitted his permit application; three subsequent permits were issued in 2005. If the motion is to refund Mr. Kushner's permit and those permits filed subsequently, this would add up to approximately \$5,200.

Action: *The motion carried 3-2 as follows: Ayes: Grzan, Kennedy, Sellers; Noes: Carr, Tate.*

16. APPOINTMENT TO LIBRARY, CULTURE & ARTS COMMISSION

Council Services & Records Manager Torrez indicated that the Council interviewed Mr. Stan Salah last week to fill a vacancy on the Library, Culture & Arts Commission. The Council may wish to discuss Mr. Salah's qualifications for appointment or the Council can proceed with a recommended appointment.

Council Member Sellers thanked Mr. Salah for interviewing for the Library, Culture & Arts Commission. He felt Mr. Salah is well qualified and would support his appointment to the Commission.

Mayor Kennedy indicated that he would appoint Mr. Salah to the Library, Culture & Arts Commission.

Action: *On a motion by Council Member Sellers and seconded by Council Member Carr, the City Council unanimously (5-0) **Ratified** the Mayor's Appointment of Mr. Salah to the Library, Culture & Arts Commission; Term Ending April 1, 2007.*

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor Kennedy adjourned the meeting at 8:25 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY